



Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

PART I: GENERAL INFORMATION

Requestor Name and Address: HOUSTON NORTHWEST HOSPITAL C/O LAW OFFICES OF P. MATTHEW O'NEIL 6514 MCNEIL DR BLDG 2 STE 201 AUSTIN TX 78729	MFDR Tracking #: M4-10-3722-01 DWC Claim #: Injured Employee:
Respondent Name and Box #: TPCIGA FOR RELIANCE NATIONAL INS Box #: 50	Date of Injury: Employer Name: Insurance Carrier #:

PART II: REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The fact of the matter is there was no MAR of medical fee guideline at the time these outpatient services were provided. As a result, the Hospital is due and owed its billed, usual and customary charges and interest under law and statute."

Amount in Dispute: \$15,510.44

PART III: RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: The respondent did not submit a response for consideration in this dispute.

PART IV: SUMMARY OF FINDINGS

Date(s) of Service	Denial Code(s)	Disputed Service	Amount in Dispute	Amount Due
7/3/2007-7/4/2007	Z585, Z652, B291, Z710, Z651, X206	Outpatient Surgery	\$15,510.44	\$0.00
Total Due:				\$0.00

PART V: REVIEW OF SUMMARY, METHODOLOGY AND EXPLANATION

Texas Labor Code § 413.011(a-d), titled *Reimbursement Policies and Guidelines*, and Division rule at 28 Texas Administrative Code §134.1, titled *Medical Reimbursement*, effective May 2, 2006 set out the reimbursement guidelines.

This request for medical fee dispute resolution was received by the Division on April 20, 2010. Division rule at 28 TAC §133.307 (c)(1)(B) allows that "A request may be filed later than one year after the date(s) of service if: (i) a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability." The Division issued a final decision and order in a related extent of injury dispute dated February 17th, 2010. Per Division rule at 28 TAC §102.5(d) "For purposes of determining the date of receipt for those written communications sent by the Commission [now the Division] which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission [now the Division] shall deem the received date to be the earliest of: five days after the date mailed via United States Postal Service regular mail; the first working day after the date the written communication was placed in a carrier's Austin representative box; or the date faxed or electronically transmitted." Review of the submitted documentation finds that the requestor filed the request for medical fee dispute resolution within 60 days from the date the requestor received the final decision. The dispute was timely filed with the Division and will be reviewed per applicable Division rules.

- For the services involved in this dispute, the respondent reduced or denied payment with reason code:
 - Z585 – THE CHARGE FOR THIS PROCEDURE EXCEEDS FAIR AND REASONABLE.
 - Z652 – RECOMMENDATION OF PAYMENT HAS BEEN BASED ON A PROCEDURE CODE WHICH BEST DESCRIBES SERVICES RENDERED.
 - B291 – THIS IS A BUNDLED OR NON COVERED PROCEDURE BASED ON MEDICARE GUIDELINES; NO SEPARATE PAYMENT ALLOWED.

- Z710 – THIS CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE ALLOWANCE.
 - Z651 – THIS CHARGE HAS BEEN REIMBURSED ACCORDING TO THE APPROPRIATE FEE SCHEDULE OR USUAL AND CUSTOMARY.
 - X206 – THE SERVICE(S) IS FOR A CONDITION(S) WHICH IS NOT RELATED TO THE COVERED WORK RELATED INJURY. FOR RECONSIDERATION OF CHARGES, PLEASE SUBMIT DOCUMENTATION TO SUPPORT THE RELATEDNESS OF SERVICES RENDERED TO THE WORK RELATED INJURY.
2. The insurance carrier denied disputed services with reason code X206, "THE SERVICE(S) IS FOR A CONDITION(S) WHICH IS NOT RELATED TO THE COVERED WORK RELATED INJURY. FOR RECONSIDERATION OF CHARGES, PLEASE SUBMIT DOCUMENTATION TO SUPPORT THE RELATEDNESS OF SERVICES RENDERED TO THE WORK RELATED INJURY." A contested case hearing was held on February 9, 2010 to address the extent of injury issues regarding the injured workers compensable injury. A decision and order was issued by the Houston West Field Office on February 17, 2010. The Division determined that the compensable injury extended to and included the hypotension and cardiac arrest for which the injured worker was treated on July 3, 2007 and July 4, 2007. All issues of extent of injury related to the services in dispute have been resolved. The disputed services will therefore be reviewed per applicable Division rules and fee guidelines.
 3. This dispute relates to outpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 TAC §134.1, effective May 2, 2006, 31 TexReg 3561, which requires that, in the absence of an applicable fee guideline, reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with subsection §134.1(d) which states that "Fair and reasonable reimbursement: (1) is consistent with the criteria of Labor Code §413.011; (2) ensures that similar procedures provided in similar circumstances receive similar reimbursement; and (3) is based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available."
 4. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
 5. Division rule at 28 TAC §133.307(c)(2)(E), effective May 25, 2008, 33 TexReg 3954, applicable to requests filed on or after May 25, 2008, requires that the request shall include "a copy of all applicable medical records specific to the dates of service in dispute." Review of the documentation submitted by the requestor finds that the requestor has not provided medical records to support the services in dispute. The Division concludes that requestor has not met the requirements of Division rule at 28 TAC §133.307(c)(2)(E).
 6. Division rule at 28 TAC §133.307(c)(2)(G), effective May 25, 2008, 33 TexReg 3954, applicable to requests filed on or after May 25, 2008, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable." Review of the submitted documentation finds that:
 - The requestor's position statement states that "The fact of the matter is there was no MAR of medical fee guideline at the time these outpatient services were provided. As a result, the Hospital is due and owed its billed, usual and customary charges and interest under law and statute."
 - The requestor does not discuss or demonstrate how payment at the usual and customary would result in a fair and reasonable reimbursement. The Division has previously found that "hospital charges are not a valid indicator of a hospital's costs of providing services nor of what is being paid by other payors," as stated in the adoption preamble to the Division's former *Acute Care Inpatient Hospital Fee Guideline*, 22 TexReg 6276 (July 4, 1997). It further states that "Alternative methods of reimbursement were considered... and rejected because they use hospital charges as their basis and allow the hospitals to affect their reimbursement by inflating their charges..." 22 TexReg 6268-6269. Therefore, the use of a hospital's "usual and customary" charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
 - The requestor does not discuss or explain how payment of its billed, usual and customary charges would result in a fair and reasonable reimbursement.
 - The Division has previously found that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. This methodology was considered and rejected by the Division in the *Acute Care Inpatient Hospital Fee Guideline* adoption preamble which states at 22 Texas Register 6276 (July 4, 1997) that:

"A discount from billed charges was another method of reimbursement which was considered. Again, this method was found unacceptable because it leaves the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment

of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs, would be administratively burdensome for the Commission and system participants, and would require additional Commission resources.”

- The Division has previously found that a reimbursement methodology based on hospital costs does not produce a fair and reasonable reimbursement amount. This methodology was considered and rejected by the Division in the *Acute Care Inpatient Hospital Fee Guideline* adoption preamble which states at 22 Texas Register 6276 (July 4, 1997) that:

“The Commission [now the Division] chose not to adopt a cost-based reimbursement methodology. The cost calculation on which cost-based models... are derived typically use hospital charges as a basis. Each hospital determines its own charges. In addition, a hospital's charges cannot be verified as a valid indicator of its costs... Therefore, under a so-called cost-based system a hospital can independently affect its reimbursement without its costs being verified. The cost-based methodology is therefore questionable and difficult to utilize considering the statutory objective of achieving effective medical cost control and the standard not to pay more than for similar treatment to an injured individual of an equivalent standard of living contained in Texas Labor Code §413.011. There is little incentive in this type of cost-based methodology for hospitals to contain medical costs.”

- The requestor did not submit nationally recognized published studies, published Division medical dispute decisions, or documentation of values assigned for services involving similar work and resource commitments to support the requested reimbursement.
- The requestor did not discuss or explain how payment of the requested amount would satisfy the requirements of Division rule at 28 TAC §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

7. The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307(c)(2)(E), and §133.307(c)(2)(G). The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES

Texas Labor Code §413.011(a-d), §413.031 and §413.0311
28 Texas Administrative Code §133.307, §134.1
Texas Government Code, Chapter 2001, Subchapter G

PART VII: DIVISION DECISION

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is not entitled to additional reimbursement for the services involved in this dispute.

DECISION:

_____	Grayson Richardson	December 28, 2010
Authorized Signature	Medical Fee Dispute Resolution Officer	Date
_____	_____	_____
Authorized Signature	Medical Fee Dispute Resolution Manager	Date

PART VIII: YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (twenty) days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in Division rule at 28 TAC §148.3(c).

Under Texas Labor Code §413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 Rules if the total amount sought does not exceed \$2,000. If the total amount sought exceeds \$2,000,

a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code §413.031.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.